

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Holger ZIMMERMANN et al.

Application No.: 10/594,343

Confirmation No.: 4690

Filed: (Int'l) March 11, 2005

Art Unit: 1626

For: ANTIVIRAL 4-AMINOCARBONYLAMINO-
SUBSTITUTED IMIDAZOLE COMPOUNDS

Examiner: S. Shterengarts

REQUEST FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705

MS Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

On behalf of Applicants, the undersigned requests reconsideration of the patent term adjustment indicated in the Notice of Allowance. This request is being filed before payment of the issue fee and is therefore timely. Enclosed herewith is the fee required under 37 CFR 1.705(b)(1), as set forth in 37 CFR 1.18(e).

Correct Patent Term Adjustment

Applicants respectfully request reconsideration of the adjustment indicated on the Notice of Allowance, in view of the decision in *Wyeth v. Kappos*, No. 2009-1120 (Fed. Cir. January 7, 2010). Applicants are entitled to adjustment of patent term for all non-overlapping days of PTO delay under both 35 § U.S.C. 154(b)(A) ("A" delay) and 35 § U.S.C. 154(b)(B) ("B" delay). Under *Wyeth*, "B" delay begins three years after filing; it does not overlap with "A" delay other than days falling on the same calendar date.

In the present application, the Office has failed to issue a patent within 3 years of the commencement date of the national stage (September 26, 2006). It appears the adjustment listed on the Notice of Allowability was calculated using 37 CFR § 1.703(f) “actual delay,” which is inconsistent with the *Wyeth* decision. Under *Wyeth*, Applicants are entitled to additional adjustment for days of “B” delay—days after September 26, 2009 and before issuance that do not share a calendar date with a day of “A” or applicant delay.

Applicants request recalculation of the adjustment in view of *Wyeth*, which requires adjustment for both “A” and “B” delays. Because this case was decided after the mailing of the Notice of Allowability, no detailed calculation is given; Applicants respectfully request that the Office correctly calculate the adjustment in accordance with *Wyeth*.

CONCLUSION

Applicants respectfully request reconsideration of the Office's patent term adjustment calculation and requests an adjustment as set forth above.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 584212006900.

Dated: March 30, 2010

Respectfully submitted,

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